

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 78 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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AHMEDABAD ELECTRICITY CO.LTD.

Versus

VINOD FABRICS PVT.LTD.  
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Appearance:

MR KB PUJARA for Petitioner  
Respondent Nos.1 & 2 absent, though served with  
Rules.  
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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/10/2000

CAV JUDGEMENT

This is an appeal filed by original defendant in  
Civil Suit No. 275 of 1997 which is still pending on the  
file of the learned Judge of the City Civil Court, Court,  
No.6, Ahmedabad under Sec.104(1) read with Order 43 Rule

1(r) of the Civil Procedure Code, challenging the legality and validity of the order dated 9th February, 1999 passed below Notice of Motion Exh.6 in Civil Suit No. 275 of 1997 passed by the learned Chamber Judge, Court No.6, City Civil Court, Ahmedabad (who will be referred to hereinafter as the learned Judge).

2. In this appeal, the appellant is defendant no.2, where as respondent no.1 is the plaintiff in aforesaid suit. Respondent no.2 is the defendant no.1 who has been joined in this present appeal vide order dt. 18/7/1999 passed by this Court (Coram: Y.B.Bhatt, J.) in this present appeal.

3. For the sake of convenience, parties will be referred to hereinafter as the plaintiff and defendants respectively at appropriate places.

4. The facts, leading to this present appeal, in a nutshell are as follows :-

The plaintiff is a Private Limited Company, registered under the Indian Companies Act and is carrying on business of cloth processing since many years. Defendant no.1 is a Company generating and distributing electricity within the meaning of Sec.2(4-A) of the Electricity (Supply) Act, 1948 in State of Gujarat, while defendant no.2 is distributing electricity supplied by defendant no.1 in the City of Ahmedabad, as licensee within the meaning of sec.2(6) of the Indian Electricity (Supply) Act, 1948.

5. The plaintiff has got his factory in village Pipalaj and it is getting supply of electricity from defendant no.2. Plaintiff's Consumer Number is 520511, whereas plaintiff's Group Number and Zone are 005 and City respectively. The plaintiff is regularly paying the bills for consumption of electricity issued by defendant no.2 regularly in time. It is the case of the plaintiff that defendant no.2 is issuing false bills because of defective meters installed by it. Plaintiff is making demand for more electricity but defendant no.2 is not responding to the plaintiff, as a result of which, plaintiff has been constrained to file civil suits in the City Civil Court, Ahmedabad and in that suits, plaintiff has made payments as per orders passed by the Court. It is the case of the plaintiff that because plaintiff has filed more than one suits against the defendant no.2, defendant no.2 is having prejudices against the plaintiff.

At present plaintiff is getting electricity of 120 HP load for its factory and that supply is not adequate and sufficient, as against the actual need of electricity, and therefore, plaintiff had made written request to defendant no.2 to give extension of power to the plaintiff, but defendant no.2 has not replied the plaintiff, and for that plaintiff has filed one Civil Suit against defendant no.2 in the year 1996, and in that suit, the Court passed an order for load extension of power supply, but defendant no.2 has not given that load extension of electricity supply to plaintiff.

6. As defendant no.2 is not giving load extension of the electricity supply as per demand of plaintiff, plaintiff filed aforesaid Civil Suit No. 275 of 1997 on or about 17-1-1997 and in that suit, it came with a case that plaintiff is required to instal a Diesel Generating Set (hereinafter referred to as D.G.Set for the sake of brevity) of 180 KV for its factory, and for that installation, plaintiff is ready and willing to pay requisite amount of fees. Plaintiff had made an application to defendant no.1 to obtain D.G.Set on 7/3/1996. The defendant no.1 gave its reply dated 14/3/1996 to plaintiff and in continuation of that letter dated 14/3/1996, plaintiff has made payment by cheque with covering letter dated 2/5/1996. Thereafter plaintiff has completed all necessary formalities for installation of D.G.Set in presence of Electrical Inspector. Before installing D.G.Set, the consent of defendant no.1 is necessary, but before obtaining that consent, approval of defendant no.2 is also very much necessary. It is the case of plaintiff that for reasons best known to defendant no.2, defendant no.2 has not given approval as required by law and anyhow, the proceeding with regard to installation of D.G.Set is being delayed. Therefore, plaintiff filed Civil Suit No. 275 of 1997 and simultaneously, submitted application Ex.6 on 17/1/1997. One of the main prayers in that application was for a mandatory injunction directing defendants to supply electricity for installation of D.G.Set till final disposal of the suit.

7. On 17/1/1997, the learned Judge passed an order directing Office to issue notice returnable on 21/1/1997. On 21/1/1997, plaintiff and his advocate remained absent and therefore said Notice of Motion Ex.6 was dismissed in default with no order as to costs. It appears that thereafter that Notice of Motion was taken up for final hearing and after hearing the learned advocates for both the parties, the learned Judge has come to a conclusion that plaintiff has established its prima facie case, and

further that balance of convenience in its favour. The learned Judge was also pleased to further observe in his judgment that if injunction as prayed for is granted in light of undertaking given by the plaintiff, defendant company is not likely to suffer any irreparable loss as securities are provided by the plaintiff by submitting its undertaking at Ex.24. The plaintiff has submitted an undertaking at Ex.24, stating inter alia, that plaintiff company shall not transfer or assign the immovable properties of the plaintiff company, till disposal of the said suit. The plaintiff also gave undertaking that plaintiff company would not create any lien or charge over the immovable properties of the plaintiff company. As observed by the learned Judge, said undertaking has been filed with a view to safeguard the recovery of the Ahmedabad Electricity Company. In view of aforesaid undertaking Ex.24, the learned Judge permitted plaintiff to use D.G.Set for running its factory with a direction that necessary "No Objection Certificate" be also issued by Ahmedabad Electricity Company i.e. defendant no.2 to the plaintiff in accordance with law, meaning thereby, a mandatory injunction was granted in favour of plaintiff directing defendant no.2 to issue necessary "No Objection Certificate" , of course in accordance with law.

8. Being aggrieved against and dissatisfied with the aforesaid order dt. 9/2/1999, below Exh.6 in aforesaid Civil Suit No. 275 of 1997, defendant no.2 has preferred this present appeal to this Court.

9. The appellant also submitted one Civil Application No. 1089 of 1999 in this present matter of appeal, requesting this Court to stay the operation of the order challenged in this appeal. It appears that no interim orders seem to have been granted by this Court.

10. From record, it appears that in the month of March, 1999, this appeal was taken up for hearing at admission stage by this Court (Coram: Y.B.Bhatt,J.) and after hearing the learned Counsel for the appellant i.e. original defendant, this Court summarily dismissed that appeal on 18th March, 1999. Thereafter, the present appellant preferred Letters Patent Appeal No. 397 of 1999 to this Court on 22/3/1999. That Letters Patent Appeal No. 397 of 1999 was ordered to be dismissed on 9/9/1999 only on the ground that it was not maintainable. Thereafter the appellant preferred one Misc.Civil Appln. No. 565 of 2000 under Sec.114 of the Civil Procedure Code, read with Order 47 C.P.C. for review of order dt. 18/3/1999 passed in this present appeal. That review petition being Misc. Civil Appln.No.565 of 2000 was

allowed on 5/5/2000 and this Court (Coram: Y.B.Bhatt,J.) revoked its earlier order dt.18th March, 1999 for which a review petition was presented and by that order, this Court directed the Office to place this appeal for admission hearing before the appropriate Court on 8th May, 2000. As a result of that order dt. 5/5/2000 passed in Misc. Civil Appln. No.565 of 2000, this appeal was placed before this Court (Coram: D.H.Waghela,J.) on 28/6/2000 for hearing at the admission stage and on 28/6/2000, this appeal was admitted.

11. I have heard Shri K.B.Punjara, the learned advocate for the appellant. Respondent Nos. 1 and 2 have remained absent throughout the proceeding of this present appeal, though duly served with notices of Rule.

12. Shri K.B.Punjara, the learned advocate for the appellant i.e. defendant no.2 has argued that plaintiff wanted to install Diesel Generating Set (for short "D.G.Set") for which defendant no.2 made an application to the defendant no.1 -Electricity Board. Plaintiff made an application for permission from the Electrical Inspector. As submitted by Shri Punjara, defendant no.1 and Electrical Inspector seem to have granted a permission to the plaintiff to instal D.G.Set. He has further argued that according to "conditions of supply", the consent from the appellant Company i.e. defendant no.1 is also required to be obtained by any consumer who wants to set up D.G.Set in its factory and utilise the Set as Captive Generating Set or for actually using the same in absence of electricity supply, as a routine energy supply.

13. He has argued that the plaintiff is a consumer within the meaning of Sec.2(c) of the Indian Electricity Act, 1910 (for short "the Act") and the defendant no.2 is a licensee within the meaning of Sec.2(h) of the Act. It is not in dispute that plaintiff has made an application for "No Objection Certificate" for use of D.G.Set in factory to the General Manager, Gujarat Electricity Board, Baroda. A copy of that application is at Mark 3/2 in the suit proceeding. The plaintiff has also produced a document at Mark 3/3 in the suit proceeding to show that the consent has been given by the defendant no.1 for installation of D.G.Set. The plaintiff had also addressed a letter to the Electrical Inspector for issuance of "No Objection Certificate". Copy of that letter is at Mark 3/4 in the suit proceeding. The plaintiff has also produced a document at Mark 3/5 to show that Electrical Inspector, E & P Department, has also given "No Objection Certificate" to the plaintiff.

It is also not in dispute that plaintiff has also paid sum of Rs.2,700/- in the Office of G.E.B. i.e. defendant no.1. Consequent upon "No Objection Certificate" issued by defendant no.1 -Electrical Inspector, the plaintiff has purchased one D.G.Set for which he has produced a document Mark 3/6 in the suit proceeding and miscellaneous charges in exercise of powers conferred under Sec.43A of the Electricity (Supply) Act, 1948. A Booklet of "conditions settled regarding supply and miscellaneous charges" has been furnished to this Court. On reading that Booklet, it is found that Government of Gujarat, by its Notification No. GU-94-19-AEC 1691-4208-K, dt. 14th October, 1994, approved the said conditions of supply and miscellaneous charges.

14. Shri Pujara has drawn my attention to important fact that on the date of filing of the suit, electric connection of the plaintiff was in existence, and it was not disconnected. By drawing an attention of this Court to said factual aspect which is also referred to by the learned Judge in Para 1 of his order, Shri Pujara has drawn my attention to Clause (L) of Condition No.20 from given Booklet issued by defendant no.2. That clause (L) reads as follows:-

Clause (L) : Installation of captive power plant/ generating sets :

" Permission of the Licensee shall be obtained before installing any captive generating set in any premises within the supply area of the Licensee. Permission of the Chief Electrical Inspector of Government should also be obtained. This is to ensure that these generating sets do not inadvertently feed into the electric supply system and cause damage to Licensee's property or injury to Licensee's personnel. Violation of this rule will entail immediate disconnection of supply of electricity to the installation and recovery of cost of damages.

In addition to above, Gujarat Electricity Board's prior permission is necessary and for running the generating set in parallel with the Licensee's system, prior permission of Licensee shall be necessary."

15. The opening words of aforesaid clause (1) of Condition No.20 clearly suggest that permission of the licensee is required to be obtained before installing any

captive Generating Set. He argued that second part of Clause (1) of said Condition No.20 makes it clear that any addition to present supply of electricity by the defendant no.2, if plaintiff wants to run a Diesel Generating Set in parallel with the licensee's system, this permission of licensee is a must and without that permission, plaintiff cannot instal and start Diesel Generating Set. Despite the fact, G.E.B. has given prior permission, Shri K.B.Pujara further argued that when the learned Judge has clearly observed in Para 1 of his order which is challenged in this appeal that the electric connection of the plaintiff is in existence and it is not disconnected, then the learned Judge ought not to have given mandatory direction to the defendant no.2 to issue " No Objection Certificate" to plaintiff in accordance with law. When the learned Judge has used the words "in accordance with law" in continuation of his order directing defendant no.2 to issue "No Objection Certificate", he ought to have taken into consideration that permission of defendant no.2 is very much absolutely necessary for installation of Diesel Generating Set when electric connection given by defendant no.2 in the factory of the plaintiff is in existence and electric supply is being continuously given to plaintiff by defendant no.2.

16. If electric connection is disconnected and plaintiff is not getting any electric supply from defendant no.2, I am of the view that no permission is necessary for installation of D.G.Set. But here in this case, admittedly, electric connection in the factory of the plaintiff is in existence and supply of electric is being continuously supplied to the plaintiff for his factory by the defendant no.2, and therefore, this condition in Clause (1) of Condition No.20 is invoked by the defendant no.2 and in view of this specific condition, which is mandatory in nature, the learned Judge ought not to have passed any order indirectly granting mandatory injunction in favour of plaintiff to issue "No Objection Certificate" as required by Clause (1) of Condition No.20. Looking to Para 6 of the impugned order dt. 9/2/1999, the learned Judge has practically decreed the suit by permitting the plainiff to use D.G.Set for running a factory. On the date of passing order, the defendant no.2 had not given " no objection " for such use, and therefore, order prima facie appears to be capricious and not according to settled principles of law, and therefore, this appeal deserves to be allowed and order which is challenged in this appeal is required to be set aside.

17. In view of what is discussed hereinabove, this appeal deserves to be allowed and accordingly it is allowed. The order dt. 9/2/1999 passed below Notice of Motion Ex.5 in Civil Suit No.275 of 1997 is set aside and by this order, the plaintiff is directed immediately to stop using D.G.Set as permitted by the learned Judge of the trial Court, if he had started to use the D.G.Set. The defendant no.2 is directed to consider the application given by the plaintiff for permission to use D.G.Set strictly in accordance with law. No order as to costs.

Date: 20/10/2000. (H.H.MEHTA,J.)

ccshah